

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CHRISTIAN DIOR COUTURE SA and LOUIS VUITTON MALLETIER,

Plaintiffs,

-against-

XIAOLE LIN, TIMI GIFT SHOP, INC., SHUN MIAO DING, GUO L. HUANG, XIAOWEI GAO, XINGYUN HU, MING LI, XIUQIAN CHI, FEI Y. LU, YONGCHAN ZHANG, YU HOU QU, CAI QIN XIE, XIAOLIU WANG a/k/a LI LI WANG, and JOHN and JANE DOES 1–100,

Defendants.

Civil Case No. 22-cv-10716

ORDER GRANTING MOTION TO VACATE DEFAULT AS AGAINST DEFENDANT XIAOWEI GAO

ALVIN K. HELLERSTEIN, U.S.D.J.:

Plaintiffs Christian Dior Couture SA and Louis Vuitton Malletier (collectively, “Plaintiffs”) filed this suit against Xiaole Lin, Timi Gift Shop, Inc., Shun Miao Ding, Guo L. Huang, Xiaowei Gao, Xingyun Hu, Ming Li, Xiuqian Chi, Fei Y. Lu, Yongchan Zhang, Yu Hou Qu, Cai Qin Xie, Xiaoliu Wang a/k/a Li Li Wang, and John and Jane Does 1–100 (collectively, “Defendants”), alleging trademark counterfeiting, trademark infringement, dilution, false designation of origin, unfair competition, passing off, and related claims under the Lanham Act and New York State and common law. Plaintiffs filed their Second Amended Complaint on February 2, 2023, and resubmitted the same on February 6, 2023, to correct a filing error. See ECF Nos. 30, 41. Plaintiffs served Defendant Xiaowei Gao with a copy of the Second Amended Complaint via FedEx on February 3, 2023. See ECF No. 27, 64. Gao’s Answer was due 14 days later, on February 17, 2023. See ECF No. 64. On March 2, 2023, Plaintiffs moved for entry of default against Defendant Gao and other defendants. See ECF Nos. 77–83. The same day, the

Clerk of Court entered a Clerk's Certificate of Default against Gao. *See* ECF No. 87. Gao now moves to vacate her default and dismiss the action as against her pursuant to Fed. R. Civ. P. 12(b)(6), or in the alternative, to vacate her default and compel Plaintiffs to accept her proposed Answer.

The Second Amended Complaint contains the following allegations relating to Gao:

- “Upon information and belief, Defendant Xiaowei Gao is an individual residing at 211-03 28th Avenue, Bayside, NY 11360 who has reproduced Plaintiffs' Marks, or imported, advertised, marketed, promoted, distributed, offered for sale, and/or sold Counterfeit Products incorporating copies of Plaintiffs' Marks. Upon information and belief, Defendant Gao conducts and transacts business in the Chinatown area of this District, and at other locations in this District.”
- “[O]n June 23, 2022, investigators observed several similar Toyota vans parked behind GYW 2918 (registered to Defendant Lin) that were also loaded with boxes, including vehicles bearing New York license plate numbers HCA 6523, DSY 8799, GYW 2956, DGD 2539, and GZZ 4633.”
- “These same five vehicles were present during investigators' later surveillance efforts on June 25 and September 10, 2022. . . . Investigators later determined that GYW 2956 is registered to Defendant Xiaowei Gao and an address of 211-03 28th Avenue, Bayside, NY 11360.”
- “Upon information and belief, these five vehicles and their owners are involved in the counterfeiting operations, and the vehicles are used to store Counterfeit Products.”

ECF No. 41, ¶¶ 14, 87, 92, 94–96.

I find that the Second Amended Complaint pleads “enough facts to state a claim to relief that is plausible on its face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). Accordingly, Gao’s motion to dismiss the Second Amended Complaint is denied.

Plaintiffs do not object Gao’s alternative motion seeking to vacate her default. That motion is granted. The Clerk’s Certificate of Default as against Gao (ECF No. 87) is hereby vacated. The Clerk of Court shall terminate the open motion (ECF No. 92).

SO ORDERED.

Dated: April 3, 2023
New York, New York


ALVIN K. HELLERSTEIN
United States District Judge